IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.16098 of 2005**

DATE OF DECISION: October 19, 2006

PREM SINGH AND OTHERS ...PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. R.K. CHHIBBAR, SENIOR ADVOCATE,
MR. ANAND CHHIBBAR, ADVOCATE,
FOR THE PETITIONERS.

MR. ARUN PALLI, ADDL.A.G., PUNJAB,
FOR RESPONDENT NOS.1 AND 5.

MR. RAJIV ATMA RAM, SR.ADVOCATE, WITH
MR.RUPINDER KHOSLA, ADVOCATE,
FOR RESPONDENT NOS.2.

MR. HARSIMRAN SINGH SETHI, ADVOCATE,
FOR RESPONDENT NOS.4 AND 6.

ASHUTOSH MOHUNTA, J.

The prayer made in the present petition under Articles 226/227 of the Constitution of India is to the issuance of a writ in the nature of certiorari quashing notification dated 13.1.2005 (Annexure P3) under Section 4 as well as the notification dated 31.7.2005 (Annexure P6) issued under Section 6 of the Land Acquisition Act, 1894 (for short 'the Act') whereby the land belonging to the petitioners situated in the revenue estate of villages Sujanpur, Chak Phool Piara and Kailashpur, Tehsil Pathankot,

District Gurdaspur, measuring 205 Kanals 12 Marlas, has been acquired. A prayer for issuance of a writ in the nature of certiorari quashing notice dated 22.9.2005 (Annexure P9) under Section 9 of the Act has also been made.

Shortly put, notification dated 13.1.2005 (Annexure P3) under Section 4 of the Act was duly issued and published in the newspapers as per the legal requirements whereby the Government of Punjab intended to acquire the afore-mentioned land for the planned development and for setting up of Residential Urban Estate and Sub-City Centre (Commercial) in and around the area of Sujanpur Town, Tehsil Pathankot, District Gurdaspur. The petitioners and various other landowners filed objections under Section 5-A of the Act orally as well as in writing before the Collector-cum-Addl.Chief Administrator, Land Acquisition (PUDA) (respondent No.2). As per the petitioners, the objections were not decided and they were not communicated the decision with regard to the disposal of the objections by the Collector. The declaration under Section 6 of the Act was issued vide notification dated 31.7.2005 (Annexure P6) whereby the total land measuring 195 Kanals and 01 Marla (for short 'the land in dispute') has been acquired for the planned development and for setting up of residential Urban Estate and Sub-City Centre (Commercial) in and around the area of Sujanpur Town. Thereafter, the Collector (respondent No.2) issued notice dated 22.9.2005 (Annexure P9) under Section 9 of the Act calling upon the landowners to state their respective interests in the land under acquisition for the purpose of claiming compensation. It is against these three notifications that the present writ petition has been filed.

A detailed written statement has been filed by Collector (respondent No.2) to controvert the allegations made in the writ petition

and to justify the action of the official respondents to acquire the land in order to accomplish the public purpose mentioned in the impugned notifications under Sections 4 and 6 of the Act. In para 11 of the written statement it has been mentioned that Smadhs and Orchards have been released from acquisition. It has, inter alia, further been stated in this paragraph that the Site Selection Committee had selected the site in question after considering various other sites as per the requirements for the small town of Sujanpur.

The petitioners filed replication to controvert the assertions made in the written statement primarily on the ground that no justifiable reasons have been recorded in writing as to why the minimum area for developing the Urban Estate has been reduced from 50 acres.

The primary grievance of the petitioners in the present writ petition is that the total land measuring 8 Kanals 10 Marlas falling in Khasra Nos.24-R/22/3 (1 Kanal 1 Marla) and Khasra No.25R/26 (7 Kanals 9 Marlas) which had been excluded from acquisition while issuing the earlier notification dated 1.3.2004 under Section 6 of the Act, has been made a part of acquisition in the present notifications under Sections 4 and 6 of the Act. The contention of the learned counsel for the petitioners is that after the area measuring 8 Kanals 10 Marlas falling in Khasra Nos.24R/22/3 and 25R/26 had been left out of the acquisition proceedings while issuing previous notification dated 13.2004 under Section 6 of the Act, petitioner Nos.1 to 37 and one Raj Kumar had jointly purchased said left out area measuring 8 Kanals 10 Marlas = 170 Marlas for a total consideration of Rs.50 lacs on 27.9.2004 and carved out 32 plots out of the same, which were purchased by the remaining petitioner Nos.38 to 59 during the period

from 28.9.2004 to 3.1.2005. In this way, it has been contended that the petitioners have been put to an irreparable loss with the issuance of impugned notifications dated 13.1.2005 (Annexure P3) and 31.7.2005 (Annexure P-6) under Sections 4 and 6, respectively, as the earlier left out area has been made a part and parcel of the said notifications. Further, it has been contended by the learned counsel for the petitioners that issuance of impugned notifications is prima facie mala fide in nature inasmuch as the adjacent land belonging to Shri Raghunath Sahai Puri, Minister for Punjab housing and Urban Development, Punjab (respondent No.3) as well as his son Shri Naresh Puri, President, Municipal Committee, Sujanpur (respondent No.4) has been left from the array of acquisition and only the land owned by the small farmers like the petitioners has been acquired. It has further been contended that the notification under Section 4 of the Act (Annexure P2) in the present case has been issued just within 3 days of the disposal of earlier Writ Petition No.5837 of 2004 on 10.1.2005 as having become infructuous as the earlier notifications under Sections 4 and 6 of the Act for the same purpose had been withdrawn by the Collector (respondent no.2) and an affidavit dated 10.1.2005 to that effect had been filed in the Court.

The contentions raised by the learned counsel for the petitioners have vehemently been controverted by the learned counsel appearing on behalf of the respondents.

We have heard the learned counsel for the parties and examined the case file meticulously and we do not find any merit in the present writ petition.

In reply to para Nos.5, 6 and 7 it has been stated in the written

statement filed on behalf of the Collector (respondent No.2) that the area measuring 8 Kanals 10 Marlas comprised in Khasra Nos.24R/22/3 and 25R/26 was not included in the previous notification 1.3.2004 under Section 6 of the Act on the basis of the objections filed under Section 5-A of the Act as the said piece of land was an orchard. However, admittedly, after the release of the land from acquisition, the owner thereof (Shri Satyapal Pandit) carved out small plots out of it and sold the same to petitioner Nos.1 to 37, who in turn re-sold the same to petitioner Nos.38 to 59 by earning profits in violation of the Punjab Apartment and Property Regulation Act, 1995. The petitioners further admitted in the writ petition that the District Town Planner, Gurdaspur, had written a letter dated 13.12.2004 (Annexure P1) to the Executive Officer, Municipal Council, Sujanpur with regard to the construction of an unauthorized colony in the town of Sujanpur on the land to be acquired by PUDA. In order to plug this haphazard growth of unauthorized colonies, the State Government is supposed to put its machinery in operation. So far the objection of the petitioners that the impugned notification under Section 4 of the Act had been issued just 3 days after disposal of the earlier writ petition No.5837 of 2004 is concerned, the impugned notifications in the said writ petition were withdrawn on a technical ground and the government had reserved its right of initiating fresh land acquisition proceedings in accordance with law. Thus, we do not see any mala fide in the issuance of present notifications under Sections 4 and 6 of the Act.

Admittedly, the petitioners filed objections under Section 5-A of the Act to the notification dated 13.1.2005 (Annexure P2). It is also the undisputed position that the petitioners have been afforded opportunity of

hearing by the Collector. Only after considering the objections raised by the petitioners, the official respondents issued notification under Section 6 of the Act. Thus, the petitioners cannot raise objection that the declaration under Section 6 of the Act had been issued without communicating the decision on the objections filed by them under Section 5-A of the Act, which is not the legal requirement.

With regard to the objection of the petitioners that the land belonging to Shri Raghunath Sahai Puri (respondent No.3) and his son Shri Naresh Puri (respondent No.4) has been left out from the arena of acquisition, it has been stated in the relevant para 11 of the written statement as under:-

> "*……However, it is pertinent to mention here that the area in question falls within the Municiapl limits of Sujanpur town and the only natural progression of the town would be in the direction in which the land has been acquired. It is not out of place to mention here that the land which has been acquired is located right next to Sujanpur town and it was only natural for the same to be acquired. It is only after the said acquired land has been put to use that the land of the Puri family which lies further away from the town can be considered for acquisition. It is worthwhile mentioning here that the High Tension electricity wires run through the land of the family of the Minister. This land is also contiguous to the Railway Line making it unsafe and accordingly inappropriate for such a*

residential area to be developed in its close vicinity. In any case the Site Selection Committee had selected the site in question after considering various other sites as per the requirements for the town of Sujanpur with a total population of 21,000 people as per the 2001 census. With a growth rate of 2 per cent, the demand as felt necessary was only for a Urban Estate of this size to be developed……"

The afore-quoted reply to the objection raised by the petitioners is quite reasonable and satisfactory. We do not find any mala fide intention therein. Moreover, by now it is settled law that it is the subjective satisfaction of the State authorities which matters. It has been held by their Lordships of the Supreme Court in Anand Buttons Ltd. v. State of Haryana, 2005 SCCR 207, that the Authority who has to carry out the planned development is the best judge to decide which land can be exempted from acquisition without jeopardizing the development scheme. It is not possible for the Court to sit in appeal over exercise of such satisfaction by the authority. Furthermore, in para 11 of the written statement it has been stated that "residential areas, Smadhs and Orchards have been released from acquisition."

In the light of the above, we do not find any merit in this petition. It is, accordingly, dismissed. There shall, however, be no order as to costs.

(ASHUTOSH MOHUNTA)
JUDGE

October 19, 2006
Gulati

(NIRMAL YADAV)
JUDGE